

EXHIBIT “C”

SEE PRELIMINARY EXAMINATION

60TH., JUDICIAL DISTRICT COURT, DEC 19TH., 2008

**FOR A CERTIFIED, TRUE, ACCURATE
TRANSCRIPTION OF JUDGES OPINION ON THE
CULPABILITY OF RICHARD & PATRICIA DECHENEY**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MICHIGAN
IN THE 60TH DISTRICT COURT FOR THE COUNTY OF MUSKEGON
PEOPLE OF THE STATE OF MICHIGAN
v D.C. 08-105995-FY
ROGER ROBERTS C.C. 08-057305-FH

_____ /

PRELIMINARY EXAMINATION
BEFORE THE HONORABLE RICHARD J. PASARELA
District Court Judge
Muskegon, Michigan - December 19, 2008

APPEARANCES:

For the People: MR. DALE J. HILSON P-57726
Senior Prosecuting Attorney
990 Terrace Street
Muskegon, MI 49442
(231) 724-6435

For the Defendant: MR. SCOTT GRABEL P-35510
Attorney at Law
1345 Bridlewood Ln.
Williamston, MI 48895
(800) 342-7896

Transcribed by: SALLY A. JOHNSON-MCGORAN CER 3460
Recorded by: VALERIE WILLIAMS CER 6232

SALLY A. JOHNSON-MCGORAN CER 3460
OFFICIAL COURT RECORDER - 60th DISTRICT COURT
MUSKEGON, MICHIGAN

1 statue and both of them tied to language that you pointed me
2 to in the first place. A person who knowingly allowed a child
3 to engage. There doesn't seem to be any exclusion in that for
4 mom and dad. Second proposition, relative to sub section 6,
5 assuming for the purposes of argument that parental action can
6 accomplish an emancipation, the legal question becomes can
7 that action if it constitutes a crime be effective to
8 emancipate the minor for purposes of participating in a crime?

9 MR. GRABEL: Of course if the person is emancipated
10 then obviously it's not a crime.

11 THE COURT: No, no. You haven't ---- you have not
12 shown me anything in this hearing that would suggest an
13 emancipation beyond the document you're pointing to. If I
14 understand your argument correctly the entire thrust of the
15 emancipation affirmative defense under sub section 6 has to do
16 with a consent form signed by both the named alleged victim
17 and the victim ---- named alleged victim's parents. My point
18 is it does not appear that I ---- that I can find, and I'd be
19 happy to look at it if anyone can point to it, that there's an
20 exemption in the statute from a person who da, da, da, da,
21 knowingly allowed for child sexual abusive activity. There's
22 no exception in there for parents.

23 MR. GRABEL: I see. Well, and I understand.

24 THE COURT: And what you've just put on the record
here and had elicited from this officer is that the parents

SALLY A. JOHNSON-MCGORAN CER 3460
OFFICIAL COURT RECORDER - 60th DISTRICT COURT

consent to participation in X rated activity, punitively at least, potentially at least, that seems to create some culpability for parents. Now the next question is, if this is the only document that you're pointing to as an indication of emancipation of what would otherwise ---- who would otherwise be considered a minor under the age of 18, the legal question, relevant legal question would seem to be can parents by a criminal act emancipate the minor for participation in the same criminal act? Can I agree that you can forcibly rape my daughter? The answer is no.

MR. GRABEL: I think that's a different ----

THE COURT: No, it's not. The only difference is is that ---- is the name of the charge, not the idea that it's a crime.

MR. GRABEL: There's no affirmative defense under CSC 1 that you can sign away to be forcibly rape.

THE COURT: Okay. So are you going to argue to me that there is a mechanism by which you can sign away, as you put it, the ability to escape culpability for another type of felony?

MR. GRABEL: No, I guess --- I guess certainly consent is the defense in some felonies but understand something, are you suggesting that if the court legally emancipated Ms. Dechaney aren't they participating in a crime?

THE COURT: No, no, no. If ---- Well, first of all, a

SALLY A. JOHNSON-MCGORAN CER 3460
OFFICIAL COURT RECORDER - 60th DISTRICT COURT
MUSKEGON, MICHIGAN

1 MR. GRABEL: Hear me out.

2 THE COURT: If it walks like a duck, quacks like a
3 duck ----

4 MR. GRABEL: Well, let me ----

5 THE COURT: ---- and looks like a duck ----

6 MR. GRABEL: Well, let me ---- let me say ---- let me
7 give you a statement that in my opinion is even more perverse.
8 The sex here would be legal because she's over 16, but if he
9 tapes it, felony. So I mean that sounds per ---- that sounds
10 like the law is perverse, so perhaps in my opinion -----

11 THE COURT: I'm not trying to be the legislature
12 here.

13 MR. GRABEL: No, I know that. I agree.

14 THE COURT: Okay. And they made that determination
15 that they're two separate offenses here and as you pointed
16 out, the prosecutor correctly pointed out in the very
17 beginning of the hearing, we're not dealing with a rape case,
18 okay? That ---- that the activity was memorialized in some
19 fashion, in this case video, and otherwise fits ---- fits the
20 gravamen of the fact of ---- makes it a stand alone separate
21 ---- separate offense. You're pointing me to an exemption
22 from culpability based on sub section 6 drawing an objection
23 from the prosecution that it is now ---- it is irrelevant.
24 Now I initially made a ruling on that that it ---- that it was
25 relevant. Now you've put the language in, in this consent

SALLY A. JOHNSON-MCGORAN CER 3460
OFFICIAL COURT RECORDER - 60th DISTRICT COURT
MUSKEGON, MICHIGAN

form, that specifically says the parents are consenting to potentially having this child participate in X rated activity and it's ---- I gather from the four corners of that document it's X rated activity intended to be memorialized in some form of video or print form. That seems to me to make the parents subject to culpability under the statute as people who would allow the ramification off of that and the ruling is that you ----- parents cannot by a criminal act emancipate a minor to participate in the very criminal act.

10 MR. GRABEL: And I appreciate the court's thoughtful
11 analysis.

12 THE COURT: Okay, so ---- I'll reconsider my ruling
13 on the relevancy ground. It is now irrelevant because ----

14 MR. GRABEL: Thank you, Your Honor.

15 THE COURT: ----- the parents are participating in a
16 crime.

17 MR. GRABEL: I appreciate the court's thoughtful
18 analysis on that. I really do.

19 BY MR. GRABEL:

20 Q Officer, at this point after you, I guess left the, I guess
21 the gym facility to get these documents that we've discussed,
22 what did you then next do?

23 A I went back to ---- after that I attempted to, I believe it
24 was my next duty day which was by this point it was close to
25 when I go off duty, I worked on the initial report and then

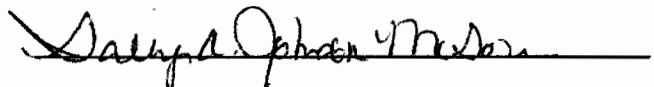
SALLY A. JOHNSON-MCGORAN CER 3460
OFFICIAL COURT RECORDER - 60th DISTRICT COURT
MUSKEGON, MICHIGAN

1 STATE OF MICHIGAN

2 SS

3 COUNTY OF MUSKEGON

4 I, Sally A. Johnson-McGoran, do hereby certify that I am a
5 Certified Court Recorder for the 60th District Court of
6 Muskegon County, that the foregoing transcript of record is a
7 full, true and correct copy of the proceedings had at the time
8 and place and in the matter hereinbefore set forth, as
9 transcribed by me.

10
11
12
13 

14 Sally A. Johnson-McGoran, CER 3460

15
16 DATE: January 14, 2009

17
18
19
20
21
22
23
24
25

SALLY A. JOHNSON-MCGORAN CER 3460
OFFICIAL COURT RECORDER - 60th DISTRICT COURT
MUSKEGON, MICHIGAN